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Human rights situation in Palestine and other occupied Arab territories

Joint written statement* submitted by the ADALAH - Legal Center for Arab Minority Rights in Israel, Al Mezan Centre for Human Rights, Al-Haq, Law in the Service of Man, Cairo Institute for Human Rights Studies, non-governmental organizations in special consultative status

The Secretary-General has received the following written statement which is circulated in accordance with Economic and Social Council resolution 1996/31.

[16 February 2015]

* This written statement is issued, unedited, in the language(s) received from the submitting non-governmental organization(s).

Addressing Persistent Failures of Israeli Domestic Investigations and Necessary Steps to End Israeli Impunity

As independent human rights organizations working to protect the rights of Palestinian residents of the Occupied Palestinian Territory (OPT), we welcome the opportunity to contribute to the Human Rights Council (HRC), particularly Agenda Item 7. We are deeply concerned, and request intervention by the HRC to effectively address:

- The ongoing lack of domestic accountability in Israel for serious violations of International Humanitarian Law (IHL) and International Human Rights Law (IHRL), such as those committed in the context of repeated Israeli military operations in the Occupied Palestinian Territory, particularly the Gaza Strip, but also in the occupied West Bank (including East Jerusalem);
- Israel's persistent non-cooperation with independent international investigations, such as the HRC's 2009 Fact Finding Mission into the Gaza Conflict (Goldstone Mission) and the Council's current Commission of Inquiry on the 2014 Gaza Conflict, as well as the relevant UN Special Procedures; and
- Israel's unlawful prolonged military occupation of the OPT, including the eight-year closure/blockade of the Gaza Strip, which is the root cause of recurring violence and ongoing violations of the human rights of Palestinians.

According to UN OCHA, between 8 July and the end of August 2014, at least 2,131 Palestinians were killed during "Operation Protective Edge", Israel's massive military operation in the Gaza Strip.[1] Al-Mezan Center for Human Rights in Gaza documented the killing of 556 children and 293 women during the Israeli military offensive, the vast majority of whom were killed inside their homes.[2] The Israeli military directly targeted family homes, destroying or severely damaging over 18,000 housing units.[3] According to OCHA, between June and August 2014, 27 Palestinians, including five children, were also killed in the occupied West Bank, including East Jerusalem.[4] In this same period, Israel's continued expansion of its illegal settlements in the occupied West Bank (including East Jerusalem) was accompanied by a campaign of collective punishment, and forced displacement.[5]

To date, Israel's investigations into Operation Protective Edge fall far short of the international standards of independence, impartiality, effectiveness, promptness and transparency. The vast majority of civil notifications and criminal complaints made respectively to the Israeli Ministry of Justice's reparations department and the Military Attorney General (MAG), remain unanswered, or have already been closed, indicating that, as in the past, the perpetrators will not be held accountable for serious IHL and IHRL violations against Palestinians.[6]

This submission illustrates this persistent pattern of Israel's failure to investigate the actions of the Israeli military in accordance with international standards, and also addresses the barriers imposed by Israel on Palestinians in Gaza from accessing Israeli courts.

In 2009, the Goldstone Mission, charged with investigating all violations of IHRL and IHL during Israel's "Operation Cast Lead" concluded that, "there are serious doubts about Israel's willingness to carry out genuine investigations in an impartial, independent, prompt and effective way as required by international law."[7] According to the Follow-up Committee of Independent Experts that monitored implementation of domestic investigations, Israel's practice of opening only a very small number of investigations into alleged violations by its military casted doubt on the impartiality of the system in general, and the MAG in particular.[8]

Despite Israel's contention that investigations have been improved in accordance with the recommendations of its government-appointed Turkel Commission, there has been no significant progress. Whereas the Turkel Commission Report (2013)[9] did identify serious shortcomings in Israel's investigatory mechanisms, its recommendations did not address the "dual role" played by the MAG, nor the absence of clear or written legal norms anchored in international law that would guide the circumstances under which the MAG will open investigations. Finally, although two years have passed since the issuance of the Turkel Report, Israel has implemented almost none of the recommendations.

Thus, domestic Israeli investigations continue to deviate substantially from international law requirements, including:

- Lack of independent investigatory mechanism (independence/impartiality): The Israeli military's newly established Fact-Finding Assessment Mechanism (FFAM) belongs to and is under the authority of the military, and is still within the hierarchy and internal organization of the army.
- Vague arguments about the existence of military necessity, military targets: The MAG does not offer any evidence used to justify the attacks against civilians or civilian objects, such as why the attacks were militarily necessary, or how, when, and where the objects were used for militaristic purposes.
- Lack of a time frame for examinations and investigations (promptness)
- Unwillingness of MAG to disclose information on witnesses and testimonies, and other evidence (transparency): In its responses, the MAG emphasized that all investigative material is classified or "secret" including the identity of the witnesses, which raises suspicion regarding the validity and accuracy of the evidence.
- Unclear circumstances under which the MAG will open an investigation

Palestinians, in particular residents of the Gaza Strip also face severe barriers to access Israeli courts in civil compensation cases against the Israeli military. Due to the severe restrictions of movement imposed by Israel's eight-year blockade of the Gaza Strip, which limit exit permits to exceptional and urgent humanitarian cases, Palestinians are denied the right to appear at evidence hearings in cases against the Israeli military, which leads to their cases being dismissed. In addition, Israel also imposes numerous barriers such as a shorter statute of limitations[10] and high financial guarantees[11] that essentially prevent Palestinians from Gaza from receiving civil remedies and compensation for their injuries by the military from Israeli courts.[12]

In December 2014, the Supreme Court contradicted a 2006 decision and upheld the onerous regulations set by the State Attorney's Office.[13,14] In practice, the 2014 decision effectively closes the doors of the Israeli courts to Palestinian residents from Gaza for their civil compensation claims, which thereby also constitutes a serious breach of Israel's obligations under international law.

The lack of accountability on Israel for its repeated severe violations of IHL and IHRL fosters a culture of impunity that all but ensures the repetition of its devastating military assaults, and the continuation of its prolonged military occupation of the Palestinian Territory. Further, Israel's refusal to cooperate with independent international mechanisms has profound implications for the protection of human rights worldwide. Accordingly, we call on the HRC and members states to:

1. Conclude that, to date, Israeli domestic investigations demonstrate an unwillingness and inability to genuinely carry out investigations or prosecutions in compliance with international standards;
2. Condemn Israel's persistent non-cooperation with UN Mechanisms, including the COI and Special Procedures;
3. Demand that Israel immediately lift the blockade of the Gaza Strip and cease collective punishment of Palestinians in the OPT, including East Jerusalem;
4. Demand that Israel remove all barriers for Palestinians to access Israeli courts to pursue civil claims against the Israeli military
5. Fully support any findings of the COI that call on Israel to comply with IHL and IHRL rules and norms including the investigation of and accountability for all violations in accordance with international standards;
6. Reiterate that Israeli violations of IHL and IHRL are rooted in Israel's prolonged military occupation of the OPT, whose inherently discriminatory features thwart the pursuit of justice for Palestinian victims.

•Civic Coalition for Palestinian Rights in Jerusalem, an NGO without consultative status, also shares the views expressed in this statement.

[1] OCHA, Gaza Emergency situation report: http://www.ochaopt.org/documents/ocha_opt_sitrep_04_09_2014.pdf

[2] See also Al-Mezan and Lawyers for Palestinian Human Rights (LPHR), Joint-complaint concerning destruction and damage to family houses in the Gaza Strip (hereafter Al-Mezan and LPHR Joint-complaint): http://mezan.org/en/details.php?id=19551&ddname=IOF&id2=7&id_dept=30&p=center

[3] OCHA, Gaza Emergency Situation. http://www.ochaopt.org/documents/ocha_opt_sitrep_27_08_2014.pdf

[4] See OCHA, Humanitarian Bulletin Monthly Report June – August 2014, p.3: http://www.ochaopt.org/documents/ocha_opt_the_humanitarian_monitor_2014_10_03_english.pdf

[5] Civic Coalition for Palestinian Rights in Jerusalem, Occupied East Jerusalem Report to the COI. 31 January 2015.

[6] For details about the status of the complaints filed by Adalah and Al-Mezan, see Adalah's Report to: The United Nations Independent Commission of Inquiry on the 2014 Gaza Conflict, 31 January 2015, pp 14-16: http://www.adalah.org/uploads/Adalah-Submission-UN-COI-Gaza-2015.pdf

[7] Report of the United Nations Fact-Finding Mission on the Gaza Conflict, U.N. Doc. Para. 1832 A/HRC/12/48 (September 25, 2009).

[8] Of the 400 incidents examined by the military, only three resulted in indictments, and the most severe punishment delivered for credit card theft. See HRC, Report of the Committee of independent experts in International humanitarian and human rights law pursuant to Council resolution 13/9, U.N. Doc. Para 24, A/HRC/16/24 (May 5, 2011); see also Amnesty International, Families Under the Rubble (2014) at 40: http://www.amnesty.org/en/library/asset/MDW15/032/2014/en/613926df-68c4-47bb-b587-00975f014e4b/mde1503222014en.pdf

[9] The Second Turkel Commission Report "Israel's Mechanisms for Examining and Investigating Complaints and Claims of Violations of the Laws of Armed Conflict According to International Law": http://www.turkelcommittee.gov.il/files/newDoc3/The%Turkel%20Report%20for%20website.pdf

[10] Section 5a(c) of the Civil Wrongs Law shortens the statute of limitations from seven to two years in lawsuits submitted against the state concerning actions of the security forces.

[11] The average sum of the guarantee is NIS 30,000 (EUR 6,730).

[12] For examples of cases dismissed because of Israel's policy of denying entry, see Adalah COI, pp 23-26.

[13] HCJ 7042/12 Maher Abu Daqqa v. Minister of the Interior

[14] HC 8276/05, Adalah, et. al. v. The Minister of Defense, et. al. (decision 12 December 2006)